

United States Court of Federal Claims

SPACE EXPLORATION
TECHNOLOGIES, CORP.,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

and

UNITED LAUNCH SERVICES, LLC.

Defendant-Intervenor.

)
) No. 14-354-C
)
) Judge: Braden
)
)
)
)
)

APPLICATION FOR ACCESS TO INFORMATION UNDER
PROTECTIVE ORDER BY EXPERT CONSULTANT

1. I, the undersigned, am a Consultant with Berkeley Research Group and hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.

2. I have been retained by Richard J. Vacura, Morrison Forester LLP and will, under the direction and control of that attorney, assist in the representation of Space Exploration Technologies, Inc. in this proceeding.

3. I hereby certify that I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of any party to this proceeding or any other firm that might gain a competitive advantage from access to the information disclosed under the protective order. Neither I nor my employer provides advice or participates in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means, for example, that neither I nor my employer provides advice concerning, or participates in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advantage.

4. My professional relationship with the party for whom I am retained in this proceeding and its personnel is strictly as a consultant on issues relevant to the proceeding. Neither I nor any member of my immediate family holds office or a management position in any company that is a party in this proceeding or in any competitor or potential competitor of a party.

5. I have attached the following information:

- a. a current resume describing my education and employment experience to date;

See Attachment A

- b. a list of all clients for whom I have performed work within the two years prior to the date of this application and a brief description of the work performed;

See Attachment B

- c. a statement of the services I am expected to perform in connection with this proceeding;

See Attachment C

- d. a description of the financial interests that I, my spouse, and/or my family has in any entity that is an interested party in this proceeding or whose protected information will be reviewed; if none, I have so stated;

See Attachment D

- e. a list identifying by name of forum, case number, date, and circumstances all instances in which I have been granted admission or been denied admission to a protective order, had a protective order admission revoked, or have been found to have violated a protective order issued by an administrative or judicial tribunal; if none, I have so stated; and

See Attachment E

- f. a list of the professional associations to which I belong, including my identification numbers.

See Attachment F

6. I have read a copy of the Protective Order issued by the court in this proceeding. I will comply in all respects with all terms and conditions of that order in handling any protected information produced in connection with the proceeding. I will not disclose any protected information to any individual who has not been admitted under the Protective Order by the court.

7. For a period of five years after the date this application is granted, I will not engage or assist in the preparation of a proposal to be submitted to any agency of the United States government for Space Launch Vehicle Services when I know or have reason to know that any party to this proceeding, or any successor entity, will be a

competitor, subcontractor, or teaming member.

8. For a period of five years after the date this application is granted, I will not engage or assist in the preparation of a proposal or submission for Space Launch Vehicle Services nor will I have any personal involvement in any such activity.

9. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

* * *

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.

Homer Winter

Signature

May 14, 2014

Date Executed

Homer Winter, Consultant

Typed Name and Title

202-480-2681

202-419-1844

Telephone & Facsimile Numbers

hwinter@brg-expert.com

E-mail Address

Richard J. Vacura

Signature of Attorney of Record

May 24, 2014

Date Executed

Richard J. Vacura, Attorney

Typed Name and Title

(703) 760-7764 & (703) 760-7777

Telephone & Facsimile Numbers

rvacura@mofo.com

E-mail Address



Homer Winter

Homer Winter
Consultant

Berkeley Research Group LLC
1919 M Street NW, Suite 800
Washington, DC 20036

hwinter@brg-expert.com

Education

- Washington & Lee University,
BS, Business Administration
with Special Attainments in
Commerce

Employment History

- Berkeley Research Group, LLC
Consultant (2012 - Present)
Senior Associate (2011 - 2012)
- Dixon Hughes Goodman LLP
Consultant (2011)
- KBR, Compliance Specialist
(2009 - 2011)

Mr. Winter's experience in government contracting includes assisting companies in identifying and resolving issues associated with Defense Contract Audit Agency (DCAA) audits, requests for equitable adjustments, and claims. He has experience in the application and interpretation of rules, regulations, and standards applicable to government contractors. Specifically, Mr. Winter's experience includes:

- Developing indirect rates and preparing incurred cost submissions
- Assessing CAS compliance
- Determining FAR cost allowability and providing guidance to clients
- Aiding clients in responding to DCAA audits
- Supporting government contracts litigation-related matters
- Assisting USAID contractors with NICRA issues, audits, and compliance matters
- Helping clients prepare and support requests for equitable adjustment

Mr. Winter began his career as a compliance specialist for a prominent defense contractor in their Government Compliance department. As a compliance specialist, Mr. Winter was a member of teams that responded to DCAA requests for information, resolved subcontractor claims, responded to DCAA Form 1s (*Notice of Contract Costs Suspended and/or Disapproved*) and DCAA Audit Reports, while working directly with DCAA and DCMA. Mr. Winter was also part of team responsible for planning and overseeing an effort to support, analyze, and evaluate all incurred costs sampled under a multi-billion dollar incurred cost audit performed by DCAA.

Since joining BRG in 2011, Mr. Winter has gained experience on several significant construction projects, including assisting in developing lost productivity claims on an \$80 million pipeline job. Further, Mr. Winter has worked closely with several non-governmental organizations (NGOs) with federal grants and cooperative agreements. A substantial part of Mr. Winter's experience continues to include assisting Federal contractors with contract compliance and audit matters.

Attachment B

ATTACHMENT B - CLIENT LIST FOR PREVIOUS 2 YEARS

Client Name	Scope of Work
Alpha Construction Company, Inc.	Damages Calculation
Bilfinger Berger SE	Damages Calculation
Blaine Construction	Damages Calculation
Brand Energy & Infrastructure Services	Damages Calculation
Counterpart International	Compliance Assessment
Dairyland Power Cooperative	Damages Calculation
FCEC United Infrastructure Projects (UIProjects) JV	Analysis of Termination Claims
Hawaiian Dredging Construction Company	Damages Calculation
Kellogg Brown and Root, Inc. (KBR)	Certified Claim Preparation, Support, and Testimony
Land O Lakes	Compliance Assessment
Robert B. Somerville Co. Limited	Lost Productivity Analyses and Change Order Preparation
Texas Keystone Incorporated	Assist in Preparation of Expert Report
Tower-Davis Electric	Damages Calculation
Tyler Mechanical	Damages Calculation
United Infrastructure Projects (UIProjects)	Request for Equitable Adjustment Preparation Support
Winrock International	Indirect Rate Consultation
Yates Construction	Certified Claim Preparation and Audit Support

Attachment C

ATTACHMENT C – SERVICES TO BE PERFORMED

I have been retained to assist outside counsel for Space Exploration Technologies, Inc. with respect to bid protest proceedings. Assistance is expected to include the following:

- Review and analysis of proposal and evaluation materials and other documents related to the contract;
- Provide advice and conclusions to outside legal counsel in connection with proposal and evaluation issues related to cost.
- We expect to review and provide counsel with analysis of the offerors' proposals and the government's evaluation of those proposals and its source selection decision.

Attachment D

ATTACHMENT D – FINANCIAL INTERESTS

A description of the financial interests that I, my spouse, and/or my family has in any entity that is an interested party in this proceeding or whose protected information will be reviewed; if none, I have so stated

NONE

Attachment E

ATTACHMENT E - PROTECTIVE ORDER LIST

A list identifying by name of forum, case number, date, and circumstances all instances in which I have been granted admission or been denied admission to a protective order, had a protective order admission revoked, or have been found to have violated a protective order issued by an administrative or judicial tribunal; if none, I have so stated.

NONE

Attachment F

ATTACHMENT F – PROFESSIONAL ASSOCIATIONS

A list of the professional associations to which I belong, including my identification numbers; if none, I have so stated.

NONE